

**This set of minutes was approved at the Town Council meeting on December 21, 2009**

**Durham Town Council  
Monday November 16, 2009  
Durham Town Hall - Council Chambers  
7:00P.M.**

**MEMBERS PRESENT:** Chair Neil Niman; Councilor Karl Van Asselt (arrived at 7:19 pm); Councilor Jerry Needell; Councilor Julian Smith (arrived at 7:43 PM); Councilor Doug Clark; Councilor Peter Stanhope; Councilor Mike Sievert; Councilor Diana Carroll; Councilor Robin Mower

**MEMBERS ABSENT:**

**OTHERS PRESENT:** Town Administrator Todd Selig; Business Manager Gail Jablonski; Public Works Director Mike Lynch; Town Engineer David Cedarholm; Town Planner Jim Campbell

**I. Call to Order**

Chair Niman called the meeting to order at 7:04 pm

**II. Approval of Agenda**

*Councilor Sievert MOVED to approve the Agenda. Councilor Clark SECONDED the motion.*

Chair Niman asked Councilors if they would be willing to move Agenda Item XI up to where X G was. He suggested that the Council could deliberate on the Budget if there was time.

*Councilor Mower MOVED to amend the Agenda to move Agenda Item XI in front of Agenda Item X G. Councilor Sievert SECONDED the motion, and it PASSED unanimously 7-0.*

*The original motion, as amended, PASSED unanimously 7-0.*

**III. Special Announcements**

Conservation Commission member Peter Smith reminded the Council that the bronze plaque honoring the Spruce Hole kettle bog would be unveiled the following day at the bog location in Durham. He said a UNH professor who was an authority on kettle bogs would speak at the ceremony, as would a representative from the National Park Service.

**IV. Approval of Minutes**

August 3, 2009

*Councilor Mower MOVED to approve the August 3, 2009 Minutes as presented. Councilor Stanhope SECONDED the motion, and it PASSED 6-0-1, with Councilor Needell abstaining because of his absence from the meeting.*

September 21, 2009

*Councilor Mower MOVED to approve the September 21, 2009 Minutes as presented. Councilor Stanhope SECONDED the motion, and it PASSED unanimously 7-0.*

## **V. Councilor and Town Administrator Roundtable**

Chair Niman said based on School Board member Henry Brackett's comments at the last Council meeting, he had drafted a letter that spoke about what the Council was trying to do to keep taxes down. He said the letter also offered assistance to the School Board in this area, and he explained that his purpose in doing this was to try to open a dialogue with the School Board.

He asked if this was something the Council was interested in supporting, or if instead the letter should come from Administrator Selig and himself, or perhaps just himself.

Councilor Stanhope said he supported this communication to the School Board. He said he was concerned that the Town's Budget wasn't able to provide funds to pave roads or provide the police coverage that was needed for the problems in some of the neighborhoods.

He said for the last few years, the Town had brought forward Budgets that had shown restraint, while the School Board and the County had increased their budgets disproportionately. He said he didn't think services could continue to be cut at the Town level, and said this would most likely be necessary if these other entities didn't show more fiscal responsibility.

Councilor Clark said there was more clout if this letter came from the Council. But he said there needed to be some structural changes in order to see a real difference in the school tax situation. He said the schools were stuck with labor contracts and unfunded mandates, especially from the federal government, resulting in a never-ending increase in services and costs.

He said he believed the School Board needed help thinking about structural changes, which was the only way to solve the problems in a sustainable way. He said he hoped Chair Niman's letter would open up communication to consider the kinds of things he and others had tried to initiate the previous year, but which didn't get very far.

Councilor Needell acknowledged that people were concerned about taxes, and said if they thought the School Board was being unresponsive regarding this issue, they should go to the School Board. But he said he wasn't convinced that the School Board should be

hearing this from the Council. He said the Board was trying to do the best job it could, and needed to be guided by the public. He noted his concern in general about Council involvement with the School Board, regardless of what this particular letter said.

He said he thought the letter itself was premature, noting that the Council hadn't adopted the Budget yet, and said there were things in the letter that prejudged what the Council would do with the Budget in the next few weeks.

Chair Niman said he was not criticizing the School Board in the letter or telling them what to do. He agreed that it might be presumptuous concerning the Budget, and said he had changed the wording in the letter regarding this. But he said if the Council was going to comment on the School Budget, it needed to do it soon, given the timing issues with that Budget.

Councilor Carroll said this letter appeared to have been written with the best of intentions to reach out to the School Board. But she said she believed they already knew what the letter said, noting that 2 years ago, representatives from the towns had met with the School Board over the course of several meetings, and had tried to work together.

She said she didn't think the letter should be sent, and believed it would be received as though the Council didn't think the School Board showed restraint and responsibility in setting the budget. She said she hadn't spent a lot of time looking at the School budget, but said she thought they were approaching it very responsibly.

Councilor Mower said she appreciated the fact that Councilors were concerned about the school portion of the tax bill. But she said she read this letter as saying the Council had expertise to bring to the School Board, and said she wasn't sure what that expertise was. She said she didn't feel that she personally had this kind of expertise. She said she thought Councilors should make their opinions known individually, and also said she thought the School Board was keenly aware of the impact on tax bills, and was doing what it could.

Councilor Van Asselt arrived at the meeting at 7:19 pm.

Councilor Clark said 50 years ago, the Selectmen in Durham, Lee, and Madbury had agreed to create a cooperative school district in order to achieve economies of scale so it would be more efficient to educate their kids with the standards in place. He said the difference today was that this defined district didn't make sense anymore.

He said if they were serious about getting taxes under control, there needed to be an analysis about the kind of model that would most efficiently educate the kids in Durham but also other kids in a broader region. He said he didn't see this kind of discussion ever happening at the School Board, and it seemed that the Council was the only place where these questions could be raised.

Chair Niman said he would send the letter, and said other Councilors could include their

names on it if they wished to do so.

Councilor Mower received clarification that some Councilors had met with the Selectmen from Lee and Madbury the previous year.

Councilor Mower said the Energy Committee had met recently and considered the issue of whether to allow non-residents to serve on the committee. She noted that they were an advisory committee, and said the members agreed that they would welcome expertise from anyone who wished to serve on the committee.

Councilor Stanhope said that at the last Council meeting, Police Chief Kurz had pointed out that in lieu of taxes the University had agreed to pay the Town \$200,000 a year over the next 10 years, but was also cutting its police department budget. He said this was happening at the same time that the Town was having extreme problems with the neighborhoods contiguous to the University.

He said this troubled him, and said it would force the Town to have to increase its Budget for those police officers in order to ensure that there was adequate policing for the neighborhoods. He said he thought the University had acted in bad faith on this, and said it would be appropriate for Administrator Selig to communicate this to the University.

Councilor Needell said there were two items of interest concerning the Planning Board. (Councilor Smith had not yet arrived at the meeting so was not present to report on this himself.) Councilor Needell said the Planning Board had approved a site plan application for a Mexican restaurant at Mill Plaza.

He said the Board had also voted to deny a Conditional Use permit for a proposed expansion of parking at Mill Plaza. He said at the Board's upcoming meeting on November 18<sup>th</sup>, it would review the conditions of denial of this application.

Councilor Mower noted that at the November 18<sup>th</sup> Planning Board meeting, there would be a conceptual review for a proposed hotel project downtown on Main Street.

Councilor Sievert said the Parks and Recreation Department had held a night out at the Courthouse building last week, but not that many people had attended. But he said it was a nice facility there, and said Parks and Recreation Director Mike Mengers was doing a great job with new programming. He noted that there was even some adult programming in the Courthouse itself.

Administrator Selig said during last year's Budget deliberations, there was discussion on the idea of a 3 year agreement with McGregor Memorial EMS. He provided details on this, and said this 2 year agreement coming forward now would reduce the Town's fee by half, down to \$18,300. He said as part of this agreement, operational guidelines had been developed to allow better coordination between McGregor and the Fire Department. He said the Town would also charge McGregor a lease fee for use of space at the Fire Department, which reflected the sf cost the Town paid to the University.

Administrator Selig said he had received some Budget-related requests from Councilors. He said the first was a request for information on what the implications would be of adding money back into the Budget. He provided a spreadsheet to Councilors which demonstrate this. He said there had also been an inquiry regarding the fund balance, and said Ms. Jablonski had done an analysis that tracked fund balance over the last 10 years. He reviewed the information on the spreadsheet, and said the fund balance was currently about \$1 million short of the \$1.7 million it ideally should be.

Chair Niman said he had run into Mark Henderson the other day at the Post Office, and said Mr. Henderson had said he and his wife would be willing to consider the design idea identified at the recent charrette, which involved a road going right through his property located at the corner across from the Post Office.

Administrator Selig said a benefit of the charrette process was that it got people to think differently about their land and the land around it, so there could be an enhanced sense of possibilities for the Town.

## **VI. Public Comments (*NLT 7:30 PM*)**

Chair Niman asked those members of the public who had come to speak regarding any of the public hearings to please wait to until those hearings were held.

**Bill Hall, Smith Park Lane,** said the reduction in students in recent years was not reflected in the personnel budgets for the schools. He recommended that the three towns should hire a consultant to consider how the schools should be run.

Mr. Hall said he was also distressed about some of the recent comments about the New England Center. He said the facility had made money for 6 years, and said it was designed to be a program driven conference center. He spoke about how this program was disbanded at a certain point, and that when it was gone, the income that had kept the NE Center profitable went too. He said this was not explained to the consultants who had recently reviewed the financial situation of the NE Center.

**Margaret Bogle, 3 Croghan Lane,** read a letter from resident Susie Loder.

Ms. Loder said she was a 35-year resident of Durham who had served on the School Board, Planning Board, and Library Board of Trustees. She said she cared about Durham and its citizens, including the long-term character of the community, which reflected a meaningful history and lovely physical aspects. She said she hoped these things would be preserved as they continued into the 21<sup>st</sup> century.

Ms. Loder noted that she was only able to attend one session of the recent charrette that was held, but said she would like to provide her perspective on it. She said Durham was a small community in comparison to the numbers at UNH, and had a small area for its downtown and community core. She said it was very disturbing to see what little space there was going to student housing, instead of to uses for the townspeople. Ms. Loder said this space was not needed for university business, because UNH had plenty of land

for its purposes.

She said in the future, she might want to live in an apartment building in the center of Town, where she could walk to the Post Office and library, and to a bakery or coffee shop. She said a town center full of misbehaving students was a great disincentive, and noted that the design of businesses below and apartments above worked in Portsmouth because responsible adults lived in the upper levels.

Ms. Loder said she realized student housing appeared to be a money maker for developers and owners of rental units, many of whom didn't live in Town. But she said the Town paid for police and fire, and also paid dearly in terms of the quality of life, but this wasn't in the calculations. She said police and fire statistics weren't set up to reveal this information. She said it was difficult to measure the quality of life, but one certainly knew when it was diminished.

She said Durham needed a viable town center with public services such as the library in a walkable, bikable location, and said putting this somewhere near Pettee Brook sounded wonderful, especially if a park or green space could be included. She said while underground parking was very expensive, it might be doable in areas where there was no ledge - perhaps under the apartment buildings for adult community members.

Ms. Loder said they shouldn't hide or pave over the brook because it was an asset. She also said with so little downtown land, they should put the walkable and public transportation accessible services in the downtown core, and locate police and fire, which were vehicular services, further out at Coes Corner or a similar location.

She said the services and businesses Durham needed included a hardware store, health food, theatre, conventional men's clothing, professional services, health services, bakery, coffee shop, music store, copy shop, a restaurant that serves something beyond pizza, etc., in addition to a library where among other things residents could meet in small and large groups, and share the contributions of citizens young and old.

Ms. Loder said the charrette presenters provided illustrations of entry to the Town from the University and west end, which was already landscaped. She said Town dwellers entered from Route 108 or Madbury Road, and she said these were the entries that needed to be improved so residents as well as those passing through Town could enjoy them. She said she realized the illustrations were also meant to create a two-way traffic flow, but said the emphasis needed to be changed.

She noted that any addition to the assessed value of Durham added to the liability to the Oyster River Cooperative School district, since the equation was based 50% on average daily membership and 50% on assessed value. She said fiscal responsibility went up with either or both factors, and said before increasing that value, they should look at what it did to the ORSCD portion, which was nearly 60% of the current tax bill.

Ms. Loder said just as with conditional use, they all needed to consider whether any form

of development was a benefit to the Town, not to just a certain few. She said money alone was not a sufficient benefit unless her tax bill was reduced by at least 20%, and in addition, her quality of life was vastly improved.

Council Smith arrived at 7:43 PM.

**Karen Mullaney, Davis Avenue**, noted the letter she had written in Friday's Fosters Daily Democrat. She said the Davis Ave and Edgewood Road areas were not alone, and said every neighborhood recognized that there was a problem. She said she had done a lot of research on this issue online, and had also gotten phone calls from around the country because her editorial had been passed around.

She said she had learned that almost every college community had this issue, and said she had read about towns where the citizens had asked their town to do something about the problem, with licensing, making the university more responsible, talk with students, etc. She said she didn't think Durham could wait 10 years to solve this problem. She said once the Town's residential homes were gone, and the value of those homes was gone, the character of the Town would be lost. She provided details on this, and said Ms. Loder's letter had been on target.

She said the Town was at a crossroads, and needed to figure out what it was going to do. She said for the \$9,000-10,000 she was paying in taxes every year, she expected the Town to solve the problem. She said it should be a high priority in Town.

**Victor Pasinsky, Meadow Road**, said he had read Ms. Mullaney's letter, and it prompted him to show up to say he did care about this issue. He noted that he had been an in-town resident of Durham for 30 years. He said things had changed, and said the problem with students was no longer as seasonal as it used to be. He said there was no longer a winter hibernation for residents of the neighborhoods and also said there were sometimes problems in the summer because of the non-owner-occupied residences.

He said these residences were spreading further out, resulting in a lot of noise and other problems. He said his primary concern was his investment in his property, and possible impacts on this from real estate decisions next door. He noted a property nearby that had been owned by a family but transitioned to ownership by an out of state parent of a UNH student. He said it became a party house for a period of time. He said things were quiet there for now, but said there were currently no solutions to this kind of situation.

**Henry Eckart, Morgan Way**, spoke about the need for a turning lane at the Morgan Way/Route 4 intersection. He said he moved to Durham in 2006 and knew Route 4 was a busy road. He said he had been hit from behind while waiting to turn. He said he was ok, but said the first thing he thought about was what would have happened if his daughter had been in the car, and what would have happened if he had been in his little car. He noted that his neighbor was hit at the intersection some time later. He said he loved Durham, but the intersection was crazy and at some point would result in a death. He said this shouldn't be allowed to happen, and asked if something could be done about this soon.

Chair Niman noted that the project to address this intersection was included in the 2010 Budget the Town Administrator had recommended to the Council. He said unless a Councilor wanted to take it out, it was already in the Budget.

Mr. Eckart said the residents had been told it was a low priority, and there was discussion.

Chair Niman said they were welcome to share their concerns during the public hearing on the Budget.

Councilor Stanhope said while the project was a low priority with DOT, it wasn't a low priority for the Town..

Another resident, who did not identify herself, spoke about an accident her son had been in at this same intersection.

**Sam Flanders, the neighborhood representative to the Rental Housing Commission,** said at the last meeting he had spoken about the immediate need to address homes being turned into slums. He said if these residential neighborhoods were allowed to deteriorate, the vision for downtown Durham would not materialize. He showed pictures of two homes on Cowell Drive, and noted that the house at 18 Cowell Drive, which was previously in good shape, had sold for 25% less than what it had previously been worth because the previous owner who had bought it had let it deteriorate. He said the house at 20 Cowell Drive was owner-occupied, and was well maintained.

Mr. Flanders said the deterioration that had occurred at 18 Cowell Drive happened quickly, and said very few homeowners would then want to come in and fix up such a property. He said as the assessed value of houses like this plummeted, and as more of this happened in a neighborhood, this drove down the value of surrounding houses. He said because of this, the tax burden was being shifted from the center of Town to the exterior portions of Town. He said residential slumlords were getting a tax break for failing to maintain their properties.

Mr. Flanders said that these kinds of problem properties were also the same ones that were responsible for noise complaints, and also said they often didn't do recycling, which meant the Town had to pay the tipping fees for this. He said the Town therefore paid twice, in the loss of revenue, and in the increase in services that were needed. He said a public policy needed to be established regarding non-owner-occupied rental properties, so these negligent landlords could be managed.

Councilor Van Asselt noted that several comments had been made about the housing issue, and said the public needed to hear that there were a number of sides to some of these things. He said if there was time that evening, he'd like the Council to have an extended roundtable discussion so he could address in a general sense some of what had been said.

**VII. Unanimous Consent Agenda** *(Requires unanimous approval. Individual items may be removed by any councilor for separate discussion and vote)*

- A. Shall the Town Council, upon recommendation of the Town Administrator, dedicate and accept the public Right-of-Way known as Britton Lane?
- B. Shall the Town Council, upon recommendation of the Town Administrator, approve an amendment to the agreement with Stephens Associates Consulting Engineers in the amount of \$90,336 to prepare engineered design plans for the Wiswall Dam repairs and fish ladder and authorize the Town Administrator to sign said agreement amendment?
- C. Shall the Town Council approve a Special Event Permit request submitted by the Durham Business Association to close a portion of Main Street for the annual “Light Up Durham” celebration on Friday, December 4, 2009 from 4:00-9:00 PM?

*Councilor Van Asselt MOVED to approve the Unanimous Consent Agenda as presented. Councilor Sievert SECONDED the motion, and PASSED unanimously 9-0.*

**VIII. Committee Appointment**

Shall the Town Council appoint Richard England, 18 Orchard Drive, as an alternate member to the Economic Development Committee?

Mr. England said he had moved to Durham about 20 years ago, and said he thought it was time he served the Town in some way. He said he would be happy to serve on the EDC.

Councilor Carroll thanked Mr. England for stepping forward, and said he brought a lot of expertise to the EDC. She also noted that he had done a lot for the Town over the years.

*Councilor Sievert MOVED to appoint Richard England, 18 Orchard Drive, as an alternate member to the Economic Development Committee, said term to expire April 30, 2011. Councilor Van Asselt SECONDED the motion, and it PASSED unanimously 9-0.*

**IX. Presentation Item**

None

**X. Unfinished Business**

- A. **PUBLIC HEARING AND ACTION ON ORDINANCE #2009-11** amending Chapter 153 “Vehicles and Traffic”, Section 153-43 “Stop Intersections” by installing a stop sign at the intersection of Deer Meadow Road and Fox Hill Road located off of Durham Point Road

*Councilor Smith MOVED to open the PUBLIC HEARING on ORDINANCE #2009-11*

***amending Chapter 153 “Vehicles and Traffic”, Section 153-43 “Stop Intersections” by installing a stop sign at the intersection of Deer Meadow Road and Fox Hill Road located off of Durham Point Road. Councilor Mower SECONDED the motion, and it PASSED unanimously 9-0.***

**Jay Eland, representing the Deer Point Association,** said the Association had voted unanimously to request the stop sign at Fox Hill Road, because it was an accident waiting to happen. He said it was a blind intersection from several vantage points and he provided details on this. He said he hoped the Council would approve this unanimously.

**Lorne Parnell, 2 Deer Meadow Road,** said he was a member of the Deer Point Association, and said the first he had heard of the proposed stop sign was in a note from Chief Kurz about the public hearing. He said rather than a T junction, it was more of a wobbly Y intersection. He provided details on the intersection and why he thought putting the stop sign in would be an obstruction and would cause confusion.

He noted that this intersection served perhaps 20 houses, and said as far as he knew, there had never been an accident there. He said if people used common sense and basic road safety, there wouldn't be a problem. He said perhaps putting a yield sign on the in-bound part of the intersection would make people understand they needed to slow down.

Councilor Needell said his understanding was that when something like this was proposed, all of the residents were contacted. He asked if there had been a miscommunication on this.

Administrator Selig said typically the Police Department didn't write to all the residents of a neighborhood at the early part of discussion. He said residents would learn about this from the association, and would have the opportunity to be engaged.

Mr. Parnell said he had gotten the notice of the public hearing a month ago. He noted that there was a meeting of the Association in the summer that he did not attend. He said he didn't believe any polling was done, and said he didn't see any minutes from the meeting.

Mr. Eland said it wasn't a Y intersection, it was a T intersection.

Councilor Mower, Mr. Lynch, and Councilor Smith agreed that there was no discussion of the alternative option Mr. Parnell had suggested at the Safety and Traffic Committee meeting. It was confirmed that members of the Committee visited the intersection.

Councilor Van Asselt asked Mr. Lynch whether he thought there should be a stop sign or a yield sign there, and Mr. Lynch said the request for a stop sign was a signed document from the Association, which was a very practical solution.

Chair Niman said he would like to do whatever the neighborhood would like. Mr. Eland said there was an annual meeting of the Association that wasn't well-attended. He said the people there were the ones who seemed to be interested in the community,

and agreed there should be a stop sign. He said there were enough members there to make a decision on this, and said the officers signed the letter requesting that action be taken.

He said his understanding was that the Traffic and Safety Committee had looked at the intersection and determined that it was an appropriate request. He provided details on why part of the intersection was blind.

***Councilor Smith MOVED to close the public hearing. Councilor Mower SECONDED the motion, and it PASSED unanimously 9-0.***

***Councilor Van Asselt MOVED to approve ORDINANCE #2009-11 amending Chapter 153 “Vehicles and Traffic”, Section 153-43 “Stop Intersections” by installing a stop sign at the intersection of Deer Meadow Road and Fox Hill Road located off of Durham Point Road. Councilor Smith SECONDED the motion.***

Councilor Clark said he had heard from some other neighbors that they hadn't known about this proposal until they got the notice for the public hearing. He said he didn't know what the policy was on this, but said his sense was that the Town hadn't notified all the neighbors. He noted that the neighbors he heard from were not opposed to the stop sign.

Councilor Mower said she believed Chief Kurz had sent letters to everyone.

Administrator Selig said there was no requirement that letters be sent early in the process, and said there only needed to be a public notice for the public hearing. But he said typically, the Police Department did send letters to the people in a neighborhood letting them know there had been a request from the local association. He said the Town wanted people to know about a proposal upfront, so things could be work out ahead of time. He said he had thought this had happened in this case.

Mr. Eland said he had received two letters as a member of the neighborhood, both of them regarding the public hearing. He also said the minutes of the Association were available online for anyone who paid attention.

Councilor Needell said he had no interest in second guessing the judgment of the Police Department and the Traffic and Safety Committee. He said he was fine with the request, but said he thought they should look at whether there had been a breakdown in communication. He said if there wasn't, he would like to understand better what the policy was.

Administrator Selig said there was typically a preliminary letter sent out, and said he was surprised it didn't occur, and had thought it had been. He noted that the Police Department was under a great deal of pressure on a lot of front, and said perhaps this had something to do with this.

***The motion PASSED unanimously 9-0.***

Councilor Stanhope left the table at this point (at approximately 8:26 PM).

- B. PUBLIC HEARING** on a proposed amendment to Section 5.12 of the Durham Town Charter that would raise the amount of bonding which requires a Town referendum vote from \$1,000,000 to \$2,500,000, and order said Town Charter amendment to be placed on the March 9, 2010 Town Election ballot

***Councilor Van Asselt MOVED to open the public hearing on a proposed amendment to Section 5.12 of the Durham Town Charter that would raise the amount of bonding which requires a Town referendum vote from \$1,000,000 to \$2,500,000, and order said Town Charter amendment to be placed on the March 9, 2010 Town Election ballot. Councilor Sievert SECONDED the motion, and it PASSED unanimously 8-0.***

**Luci Gardner, 61 Durham Point Road**, said she was opposed to the proposed increase. She said the Council wished to increase the bonding amount requiring a Town vote from \$1 million to \$2.5 million, arguing that their bonding authority should be indexed for inflation. She said they had cited the example of the pumping station bond which was over \$1 million so had necessitated a special Town vote that couldn't wait for the regular March election, and cost the Town \$3000. She said the Council further argued that as more and more projects to be bonded cost more than \$1 million, if they had the authority to bond up to \$2.5 million, they would not have to "bother the voters" so often.

She said she was opposed to this increase for several reasons. She said the first was that when she asked how often in 20 years any bonding over \$1 million required a special Town vote and couldn't wait for the regular Town election, no one had the answer. She said this resolution was a knee-jerk reaction to a unique event involving stimulus funds, and said the Council should sit tight with its million dollar authority and see how often the necessity of holding a special vote recurred, before asking the Town for an increase.

Ms. Gardner also said she believed the Council had confused indexing inflation with increasing their authority. She said nowhere was it written that the bonding amount requiring a Town vote should be indexed for inflation. She said she might feel differently if the number they sought to increase was \$1000, but said \$1million without her vote on a bond with a payback of 15-30 years was a good round number even if it was 20 years old.

She said she thought that originally, \$1 million was chosen as the arbitrary limit of the authority of a body whose individual members generally rotated every 3 years, and who may well have no accountability or be around even before the end of the bond. She also said the difference in interest and principal payback over the years between \$1 million and \$2.5 million was significant. Ms. Gardner also said that as a taxpayer, she wanted to be "bothered" every time the Council sought a bond over \$1 million, and wanted the chance to vote aye or nay on it, because that was the only system of checks or balances there was.

Ms. Gardner also said that in the normal course of events, the Council should have its

bonding requests of more than \$1 million organized sufficiently to place on the ballot, and said that timing should allow the Council and the Town to give the resolution thought rather than being tempted to spend money because it was simply available. In addition, Ms. Gardner said if the Council had the power to bond up to \$2.5 million without a Town vote, the money required might knock out an already existing CIP project. She said it also would be possible for a pet project to be pushed through quickly.

She said she believed the article was poorly written, and encouraged the Council to refrain from putting this draft on the ballot. She noted that the article didn't mention what type of vote was needed for the Council to bond amounts under \$500,000, and where there was no hearing or Town vote required. She also said the article gave the Council the authority to bond up to \$1 million or, as the Council now proposed, \$2.5 million, per issue, which could theoretically mean \$2.5 million more than once in a year.

In addition, she noted that the B section stated that borrowing for a term exceeding one year shall be authorized by the Council only after a duly advertised public hearing. She asked if that meant there would be no hearing required when the borrowing was for less than a year. She said she thought the whole article needed review and thought, and was not ready for a public hearing, let alone the ballot. She asked the Council to review the article and develop a better one.

Councilor Needell said the proposed amendment only dealt with changing the numbers, and said the language Ms. Gardner didn't like was already in the Town Charter. He said if the Council didn't do anything, that language would still exist.

Ms. Gardner said she understood this, and said in looking at the proposed change, she had noticed the poor, ambiguous language in the Charter, which she said was also inconsistent between A and B. She encouraged the Council not to go forward with this article, which was a trap for the unwary.

**Bill Hall, Smith Park Lane**, said he was worried about the pet project concept. He noted that some people on the Council had recently set their eyes on Jess Gangwer's property on Madbury Road and had also talked about the idea of eminent domain. He said he had immediately thought of the Gangwer property concerning the proposal to increase the bonded amount, because it was worth about \$2 million. He said if this went to vote, he didn't think it would pass because there were people who didn't want to spend \$2 million at that location, and there were also people who were against the idea of eminent domain.

**Bruce Bragdon, Colony Cove Road**, said the \$1 million, 2/3 vote requirement had come out of the Wagon Hill situation. He said the Council's intentions were good, but said he thought \$1 million was still a real number, and would force the public to come out more and talk about the issues, and what was good for the Town and not just what was good for the neighborhoods. He said this applied whether residents were considering what to do with the Oyster River Dam, or a bridge, etc. He said he believed the public was willing to get involved, especially because of the tax situation now, if they were presented with good information. He said if the Councilor couldn't get the public

involved, then they would have a stronger argument for coming back and saying they should talk about this.

Councilor Van Asselt asked Mr. Bragdon if the \$1 million limit set at the time of Wagon Hill was because of Wagon Hill, or because it was determined that the \$1 million amount made sense as a bonding level.

Mr. Bragdon said it was a reaction to Wagon Hill, and said a major part of this reaction was to the idea of a simple majority being required. He said residents wanted to make it difficult, so went to a 2/3 majority, and \$1 million. He noted that the Town had paid \$2.9 million for Wagon Hill so people wanted the number to be lower than that, and also wanted the referendum to come into play for other issues. He said the more important question at this point was concerning requiring a 2/3 majority. He said it was very hard to get this, and suggested there should be a super majority, which would require 60% or better. He said the public needed to weigh in on this.

Councilor Stanhope returned to the table at 8:39 pm.

**Rita Murphy, 5 Williams Way**, said \$1 million was a reasonable amount of money, and said anything beyond that needed a second look by the townspeople. She asked how many people had gotten a 250% increase in their income since 1989, and several people, including members of the Council, raised their hands.

***Councilor Smith MOVED to close the public hearing. Councilor Van Asselt SECONDED the motion, and it PASSED unanimously 9-0.***

***Councilor Van Asselt MOVED to approve the proposed amendment to Section 5.12 of the Durham Town Charter that would raise the amount of bonding which requires a Town referendum vote from \$1,000,000 to \$2,500,000, and order said Town Charter amendment to be placed on the March 9, 2010 Town Election ballot. Councilor Stanhope SECONDED the motion.***

Councilor Van Asselt said he'd made the motion for purposes of discussion. He said he thought there was an assumption that members of the Council were not responsible in proposing this amendment, and said he didn't buy that. He said the \$1 million amount set at the time of Wagon Hill could come and go pretty quickly with a project these days, and said that was why the amendment had been proposed.

He also said he agreed with Mr. Bragdon that requiring a 2/3 vote on a referendum was a real problem, and said this had never made sense to him. He said he would vote against the motion he'd made, and said the Council should live with the \$1 million for awhile.

Councilor Stanhope said he didn't have a problem letting voters make this decision rather than the Council. He said if they were uncomfortable with changing the Charter in this way, they would turn it down.

Councilor Smith said he thought there was a good chance the voters would turn this down. He also thanked Ms. Gardner for raising the flag regarding ambiguous language in the existing Charter provision. He said he would vote against the motion, and noted that he had voted against having the public hearing in the first place.

Councilor Clark said logic told him that \$1 million 20 years ago wasn't the same as \$1 million today, so keeping it at this level forever didn't make sense. He also said if the language in the Charter on this issue was ambiguous, the Council should do this right once rather than piecemeal. He also said in revisiting this, they should look at the 2/3 vote issue.

Administrator Selig said behind the language in the Charter was State statute. and said between the two of them, there was no ambiguity. He provided details on this.

Councilor Clark said he wanted to be sure that anything put in front of the voters had a good chance of passing. He said just putting the \$2.5 million out without addressing the 2/3 vote issue or talking about inflation was just asking for trouble in the future.

Councilor Needell first said he didn't think there was a problem with the language in the Charter, and provided details on this. He then said there were two important points raised that evening, one of which was that there was a sense that \$1 million was still a reasonable threshold to trigger Town involvement. He also said a question raised was how often this kind of thing had occurred, which the Council hadn't talked about much. But he said clearly, there hadn't been a major problem with this.

Administrator Selig provided details that there hadn't been many of these situations.

Councilor Needell said the Council didn't want to put something on the ballot that didn't have an excellent chance of passing, and said he didn't think the Council had made a strong enough case for it yet. He said they could talk about changing other pieces of this, and said it was a fair discussion to have at some point. But he said this was not a new discussion, noting that it had come up every year since he had been on the Council, and that he had raised it once or twice himself. He said it was triggered again this year, and was a reasonable question to ask as to whether the amount should be increased.

Councilor Needell said this was not something that had been dreamed up by the Town Administrator and said he believed it had come forward with the best of intentions and after many years of discussion. But he said given what he had heard that evening, he had thought about it some more, and didn't think it was ready to move forward.

Councilor Van Asselt recommended that the Council not pass this motion, because if it was put out there and failed, it would be that much harder to put it out next time.

Councilor Carroll said she would vote against the motion as well. She noted that she had previously suggested an amount of \$1.5 million or \$2 million. She said the Council was getting the feeling already from the public as to how they felt about what the Council had

proposed. She also said she agreed that a 2/3 vote requirement was an obstacle, and said she didn't think it had to be that high for the projects that would come forward in Durham. She said the Council should therefore look at this as well. She asked Administrator Selig when the Council would have to have this ready if they wanted to make a change to the 2/3 vote language.

Administrator Selig reviewed the process that would be required, and said they could look at whether it could be structured to allow this.

Councilor Sievert suggested that if they were going to stay with the \$2.5 million amount that had been proposed, they should keep the 2/3 vote requirement, but if they were going to go with \$1 million, they should get rid of that requirement.

Chair Niman said it sounded like that was what the Council would wind up doing.

Councilor Needell said he would vote against the motion, and recommended that the Council not make any changes this year. He said there was no rush on this.

Chair Niman said he didn't see it happening this year.

Councilor Mower said there weren't many instances that drew the community together to discuss an issue. She said she didn't see that keeping a lower bonding figure that required a referendum was an artificial way to do this, because it would often be related to an issue that would be of Town wide interest, and would get people talking prior to the referendum. She said this was something worth considering as they moved forward.

Administrator Selig said the idea of raising the bonding threshold had come up before, noting that bid specifications had been altered over the years to adjust for inflation. He said his response in the past had been that it hadn't been an issue for the Town, so the threshold should be left as it was. But he said it had been an unusual situation this year because of a large amount of stimulus funds that had become available, including funds for the Dover Road pump station project.

He said ultimately the Town would pay less than \$1 million for this project because of the stimulus funds, but said the Town would have to pay more than that upfront, which had triggered the bond process. He provided details on this, and said the special election had therefore been required in order to secure the federal funds. He said this was what had generated the discussion by the Council as to whether the bond threshold should be revisited.

He noted that the initial draft had tied the increase to inflation, using the consumer price index going forward so the Council wouldn't have to go back to the voters again in the future. But he said after a lot of Council discussion, it was decided that this wasn't appropriate. He said this was therefore not an effort to increase the authority of the Council, and was actually quite the opposite. He said it was intended to update the threshold to be consistent with 20 years ago.

Councilor Stanhope said Mr. Bragdon had brought some wisdom to this process. But he said he thought any bond issue should be sold to a super majority of the community. He noted that future Town projects could be up to \$10 million, and said he wanted to make sure that a super majority was willing to take on that financial obligation. He said reducing that threshold went against what their forefathers had envisioned as a threshold for bonding in a municipality.

***The motion FAILED 1-8, with Councilor Stanhope voting in favor of it.***

The Council stood in recess from 8:58-9:10 pm

**C. PUBLIC HEARING** on the Town Administrator's proposed FY 2010 Operating Budgets and Capital Budget

Chair Niman first said his sense was that there wasn't anyone on the Council who wanted to take the Morgan Way intersection project out of the Budget, so perhaps the public comments weren't even needed. He asked Administrator Selig to explain how this project got in the Budget, and why its #6 ranking in the CIP didn't mean anything once the project was in the Budget.

Administrator Selig reviewed the annual Budget process. He said he had presented the Budget to the Council on Oct 31<sup>st</sup>, which resulted in an operational decrease of about, \$82,000, with a Budget of \$10,324,489, which kept the tax rate constant for the Town's portion of it. He said an important item included in the Budget was improvements to the Route 4/Morgan Way intersection that totaled \$392,000. He said the Town anticipated using funds from the NHDOT highway aid program for the project, which would involve an east bound left hand turn lane off Route 4 to Morgan Way.

He provide details on why the Town was doing this, despite the fact that this was a State roadway. Among other things, he noted that DOT had budget challenges, but acknowledged this was a substandard location. He said while they didn't have the funds to address this now, he was recommending that the Town front the funds, which would be bonded. He noted that this would not require a referendum vote because the cost would be under \$1 million. He said the Town would then apply to the State to get reimbursed for 2/3 of the cost when that money became available.

Administrator Selig said there was no guarantee, but said it was likely that the funding would come through at some point in time, based on past DOT practice. He said despite some risk, he thought it made sense to make this investment in the intersection, even if the money from the State never came through. He said the question now was whether the Council was comfortable keeping this project in the Budget.

Chair Niman asked if any Councilors had a sense that they would want to make a case to take the Morgan Way project out of the budget. He said he didn't see the need to hear an hour of public hearing about the intersection when it was already in the Budget.

Administrator Selig explained that the ranking of #6 related to the CIP, stating that it was

how DPW had ranked it, not how he had ranked it. He noted that there were CIP items ranked higher that were not fully funded in the Budget, while the Morgan Way project was fully funded.

Chair Niman suggested that they open the public hearing, and asked that people speak briefly on the intersection because he didn't see there was a sense of the Council to get rid of it. He also said people were more than welcome to talk about anything they wanted to talk about, for as long as they liked.

***Councilor Mower MOVED to open the public hearing on the Town Administrator's proposed FY 2010 Operating Budgets and Capital Budget. Councilor Smith SECONDED the motion, and it PASSED unanimously 9-0.***

**Debra Walden 4 Morgan Way**, said the residents were trying to find out whether if the Council left this in the Budget, this would be a commitment that the turning lane would be put in.

Administrator Selig said if this project remained in the Budget, the Town would move forward will all speed to design the improvements in conjunction with the State. He provided details on the process, and noted that DPW projects moved more slowly than one would like. He noted that because there was a State road involved, there were some additional layers of complexity. He said it would probably take the winter and spring to design this, get the approvals from DOT, and get into the highway reimbursement program. He said construction might take place in 2010, but also said it might take until 2011 to get everything in place. He noted some issues to resolve concern abutters and wetlands.

Ms. Walden said it would be helpful if the people in the neighborhood knew the names and numbers of the State agencies they should be contacting, and said they would do their part to keep this on the front burner with these agencies. She also asked what the Town could do, including perhaps talk with its State representatives. She said otherwise, the current situation was going to result in a death. She said this situation couldn't wait.

Administrator Selig said the Town could provide the contact information, and noted that Chief Kurz had tried to keep the neighborhood involved.

Ms. Walden said her husband, Toby Ball, had been in the most recent accident at Morgan Way in March. She considered what would have happened if their daughter had been in the car.

**Scott Lauer, 9 Williams Way**, said all of the neighbors supported this turning lane. He said another issue for the neighborhood was that there were no fire hydrants there, and noted that the narrow bridge there was a barrier to bringing water in. He said when there had been a fire there awhile back, hoses had to be stretched there from Emery Farm. He asked if someone could get back to him on this issue.

Mr. Lauer said another issue with the Morgan Way intersection was that people came up the hill on Route 4 pretty fast. He said if there was a cop sitting there, people would be more aware of the fact that there was a 45 mph speed limit. He said if they were going 45 mph, they could probably avoid hitting him, but not at 70 mph.

**Bill White, 18 Williams Way**, said the turning lane would be a great step forward. He also said those designing the changes for the intersection should consider putting in a blinking light or some other additional alert so people coming over the hill would know there was a turning lane, and they should slow down. He explained that once they came over the hill, it was too late.

**Steve Jasinski, 16 Williams Way** said he was glad the intersection improvement was in the Budget. He asked if something could perhaps be done in the short term, such as a change in the speed limit, signs, etc., because it sounded like it would be a year before the proposed changes were made. He said everyone in the neighborhood had had a close call at that intersection.

Administrator Selig said because Route 4 was a State road, DOT had to agree about what was done. He noted that the Town had been mowing the areas on the sides of the road to open up the sight lines more. He said the Town could inquire about signage, and said the Town had already asked about blinking lights and a stop light. He said the State wasn't open to this because they were trying to encourage movement through the corridor. He also said enforcement of the speed limit by the Police Department was a challenge because they were stretched thin right now. But he said they had had a presence along that stretch over the last year and a half.

**Rita Murphy, 5 Williams Way**, spoke about some pictures of the proposed turning lane, and said she liked the design and it looked like it would be pretty easy to do. She suggested that it could be like the intersection up the road, which was put in on a stretch of road that was straight, and where there were no blind spots.

Administrator Selig said discussion with DOT had indicated there wasn't enough pavement to allow the road to simply be re-striped. He said it was therefore necessary to create additional pavement, but said this would be minimal. He said this was the simplest, most cost saving solution the Town could come up with.

Ms. Murphy noted the guard rail across the street from the intersection. and said she understood that it was there to protect the house there. But she said it was one of the problems in the area because it cut down the ability of trucks and larger cars to get around the cars that were turning.

**Ree Haney, Tirrell Place**, asked what assurances the Council could give them that this intersection would be put in.

Chair Niman said the Council couldn't give them these assurances until the end of the Budget process on December 31<sup>st</sup>. He said the Council hadn't deliberated on the Budget

yet and said there was a process they had to respect. He said it would be inappropriate to have any kind of formal vote on the Budget at this time. He said he couldn't give any guarantees, but said it was highly unlikely that this would be pulled out of the Budget.

Ms. Haney said she thought the residents should therefore tell their stories. She thanked Chief Kurz for giving the neighbors some direction and hope that this turning lane would be put in. She said of the 23 accidents, some had been rollovers and 3 had involved head on collisions. She said there had been countless near misses, and amazingly, there had been no fatalities yet. She provided details on how difficult it was for residents every time a crash occurred, and they worried that it was their loved ones who were involved.

She spoke about the fact that her brother had died at 48 in a senseless car crash at an unsafe intersection. She also said the following month, rather than celebrating her daughter's wedding anniversary, they would cope with her loss. She said the day before her wedding at age 22, she was involved in a fatal car crash. She said this could happen to anyone, and said it would happen at this intersection. She said the residents of the neighborhood were on borrowed time, and said when it did happen, not any of them would be thinking that at least the Town was pretty, and that the fish were happy. She asked the Council to think of safety first, and to please keep the intersection improvements in the Budget.

**Helen Mason, Tirrell Place**, said when the analysis of route 4 was done in 2000-2001, there was discussion about making the road safer by making it straighter, wider and with bigger shoulders, and said it was also the speed people drove at there would increase. She said this was what had happened, and said while it was 45 mph zone, data from road monitoring a few years ago indicated that cars were going on average more than 10-15 miles over this. She said according to the State, that was an acceptable traveling speed on Route 4, and it was loath to do anything to reduce that speed because it was the main east-west corridor between the Seacoast and Concord.

She said they all knew speed killed and that the Morgan Way intersection was unsafe, and said if someone from DPW lived in her neighborhood, this project would be #1 on its list. She said if this project didn't get done in the next year or two, she wondered which residents in the room now wouldn't be around. She noted that the intersection near Shearwater had gotten a turning lane because someone died there.

**Bill Hall** said in back of Morgan Way was the water line to Portsmouth, and said Durham could tap it for fire because it passed through the Town. He said the cost would be approximately the same as one years' taxes on a house in the neighborhood. He said he couldn't imagine why a hydrant hadn't been put in this neighborhood yet.

Mr. Hall said the reason why the Morgan Way intersection hadn't been addressed previously was that when the speed limit was 50, there were 7 fatal accidents between Route 108 and Cedar Point Road in 2 years. He said the speed limit was dropped, which was a struggle, but said because of this and the fact that the death count went down, the Morgan Way intersection was never addressed. But he said there wasn't another

intersection in Durham that was more dangerous, and said it should go to the top of the Council's list.

**Bruce Bragdon**, asked if perhaps without taking a formal vote, Councilors could raise their hands if at this point in time they supported leaving this project in the Budget. He suggested that the residents could also be given some reassurance that if there was discussion to take it out of the Budget, they would be contacted.

There was discussion by the Council on how to proceed.

***Councilor Stanhope MOVED to amend the Agenda to have a brief discussion on this particular item following the public hearing. Councilor Sievert SECONDED the motion, and it PASSED unanimously 9-0.***

Chair Niman asked if any members of the public wished to speak concerning other aspects of the Budget.

**Bruce Bragdon** said the Council had done a great job trying to keep things under control with the Budget, and said he knew from experience that it could be a very frustrating process. He said there were two aspects of the proposed 2010 Budget that needed to be thought about, and said one was the idea of cutting the Roads Budget. He said at a minimum in the Road Budget, they should think strongly about using the State gas tax money (\$230,000) as a minimum amount of money to support this program. He said these funds shouldn't be put in the General Fund. He said if this money wasn't used for roads, it would come back to bite the Town because it would get more and more expensive to repair them. He said this wouldn't be good for the taxpayers.

Mr. Bragdon said the same thing was true in terms of replacing police vehicles, and suggested that if they were going to cut some new vehicles from the Budget, they should at least put aside money every year for vehicle replacement. He said if the Town then got some extra years out of a vehicle, that would be good, but said it would avoid a situation where 2-3 vehicles had to be replaced in a particular year.

Administrator Selig said resident Dick Gsottschneider had provided a letter that said he was in favor of including additional resources in the Budget for the Police Department. He said he believed what Mr. Gsottschneider meant by this was a 19<sup>th</sup> police officer.

**Bill Hall** said he was concerned that the Town had originally required the head of the DPW to have an engineering degree, then hired an engineer and was now looking to have a third position for an engineer. He said no town of Durham's size needed two engineers, but said what they might need was some consulting services on the high end of engineering. He said they didn't need an in house trainee, and said in many cases, the work that person would do could be done by another employee of the DPW.

***Councilor Smith MOVED to close the Public Hearing. Councilor Mower SECONDED the motion, and it PASSED unanimously 9-0.***

Discussion on the Morgan Way intersection improvements Budget Item

Chair Niman asked if perhaps the Council should make a motion that it was not going to take the Morgan Way intersection improvements out of the Budget.

Councilor Needell said he wasn't interested in taking this item out of the budget, but did have some questions about it. He said when The Council had discussed the Budget last week, there were a lot of questions about this item. He said it seemed quite clear that the Town would do this project, but that it would take a year or more to get the work done. He said if this was in the approved Budget, a question was if the Town could then talk to the State about what to do in the mean time, with a blinking light, parking a police cruiser there, etc.

Mr. Lynch said yes. He said the important thing here was that this project stayed in the Budget, and said then the Town would apply for the aid and get into the queue, and then there could be discussion on a number of things. He said he thought the State would be very reasonable about getting some other options in the interim.

Councilor Stanhope said he didn't see the need for a motion, and said he would strongly oppose any attempt to remove this from the Budget. He also said he wanted it to be fast-tracked be a high priority for the DWP and the Town Administrator. He said every effort should be made to address short term solutions, and also said he didn't want to see this buried in a bureaucratic process. He said the residents had expressed the reality of the risk of serious injury and death at this intersection, and said it was an essential responsibility on the Council's part to address this in a timely fashion.

Councilor Sievert said he agreed, and noted that he had gone by the intersection that day to try to take the turn. He also said he lived on Riverview Road, so knew how fast everyone went on Route 4. He said he thought the Town was on board with this project, and said they shouldn't take it out of the Budget. He also said this was DOT's problem, and said calling some people at the State would certainly help.

Councilor Mower asked if perhaps they could get help from Strafford Regional Planning Commission about speaking on behalf of the Town to raise the priority level on this. She said she was not interested in taking this out of the Budget.

Councilor Smith said he definitely wanted to keep this in the Budget. He noted that he was on the Traffic Safety Committee, which had taken this issue seriously and recommended the changes.

Chair Niman said he didn't want this project taken out of the Budget.

Councilor Clark said he didn't mind being part of a Council that got this project done, but not without telling the State how unfortunate this situation was. He said he didn't understand how it hadn't been addressed before, or how the development was approved,

because this problem was so predictable. He said the State wasn't being nearly as responsible as it should be, and said the Council should take this opportunity to make sure they heard this. He said he was not interested in taking this out of the Budget.

Councilor Carroll said she wanted to see this money stay in the Budget and used for this purpose. She thanked those who had come to the meeting and said it was really important that they had done this. She said they had seen and heard that the Council did listen to neighborhood issues, and said it was the Council's job to pay attention to the neighborhoods, while also paying attention to the whole Town, and bringing it together.

- D. PUBLIC HEARING AND ACTION ON RESOLUTION #2009-24** authorizing the acceptance and expenditure of \$10,574.12 in unanticipated revenues from the State of New Hampshire Department of Safety following the FEMA disaster declared for the December 11 and 12, 2008 ice storm event

*Councilor Smith MOVED to open the public hearing on RESOLUTION #2009-24 authorizing the acceptance and expenditure of \$10,574.12 in unanticipated revenues from the State of New Hampshire Department of Safety following the FEMA disaster declared for the December 11 and 12, 2008 ice storm event. Councilor Mower SECONDED the motion, and it PASSED unanimously 9-0.*

No members of the public spoke.

*Councilor Smith MOVED to close the public hearing. Councilor Mower SECONDED the motion, and it PASSED unanimously 9-0.*

*Councilor Mower MOVED to adopt RESOLUTION #2009-24 authorizing the acceptance and expenditure of \$10,574.12 in unanticipated revenues from the State of New Hampshire Department of Safety following the FEMA disaster declared for the December 11 and 12, 2008 ice storm event. Councilor Smith SECONDED the motion, and it PASSED unanimously 9-0.*

- E. PUBLIC HEARING AND ACTION ON RESOLUTION #2009-25** authorizing the acceptance and expenditure of grant funds in the amount of \$40,000 from the New Hampshire Department of Environmental Services Coastal Program to further evaluate issues associated with the Mill Pond

*Councilor Mower MOVED to open the public hearing on RESOLUTION #2009-25 authorizing the acceptance and expenditure of grant funds in the amount of \$40,000 from the New Hampshire Department of Environmental Services Coastal Program to further evaluate issues associated with the Mill Pond. Councilor Clark SECONDED the motion, and it PASSED unanimously 9-0.*

No members of the public spoke.

***Councilor Smith MOVED to close the public hearing. Councilor Mower SECONDED the motion, and it PASSED unanimously 9-0.***

***Councilor Clark MOVED to adopt RESOLUTION #2009-25 authorizing the acceptance and expenditure of grant funds in the amount of \$40,000 from the New Hampshire Department of Environmental Services Coastal Program to further evaluate issues associated with the Mill Pond Councilor Sievert SECONDED the motion, and it PASSED unanimously 9-0.***

- F. Discussion and recommended action on an amendment to the terms of the Purchase and Sale Agreement between the Town of Durham and Chinburg Builders relative to the Durham Business Park

Councilor Sievert recused himself and left the table.

Administrator Selig noted that the Council had had a lengthy conversation on the future of the Durham Business Park on October 5<sup>th</sup>. He said he had then had a long conversation with Mr. Chinburg about factors that had affected the marketability of the parcel since the Town had entered into the Purchase and Sale Agreement. He noted the following:

- real estate market and the economy have declined
- additional wetlands had been identified on site, further reducing the buildable area
- DOT has placed limitations on the land because of traffic impacts along Route 4
- there has been an increase in the availability of quality, relatively inexpensive office and retail space in the Portsmouth and Dover areas

He reviewed the process by which Chinburg Builders had originally been chosen, and also spoke about the design guidelines in place for the Business Park. He noted that the Town had hoped to reimburse the sewer users over time with the purchase price of the parcel and if possible, wanted to recapture some of the money spent to develop the site. He said the development agreement established the purchase price of 350,000 for up to 35,000 sf of net usable building area, and said an additional \$10 per sf was added for all of the construction over 35,000 sf, with the idea that if more than 35,000 sf was built, the Town would recoup the amount and reimburse the sewer users.

He said he and Mr. Chinburg had revisited the terms of the agreement. He explained that Chinburg had said that because of the traffic limitations on Route 4, potential clients were concerned that in order to develop the site, they would have to develop Old Piscataqua Road as an access way. He said if they were paying Durham the additional \$10 per net sf price, there was nothing left over to invest in this roadway.

He asked Mr. Chinburg to speak to the Council about his perspective in marketing the parcel, and said there could be conversation about whether there was a solution that met the Council's needs. He said a benefit of this was that Mr. Chinburg didn't feel a Zoning change would be necessary at this point in order to market the parcel, although he would be open to additional discussion on this. He said given the Council's clear goal to move forward to develop this parcel, he thought it made sense to bring them a solution that

tried to do that.

Mr. Chinburg said in the last several months, it had been determined with DOT that the traffic count limitations were a pretty solid cap. He said DOT's main concern was the need for a left turn lane if there were more than 60 trips at the peak hour. He said if a potential user of the site wanted to expand beyond the size the existing intersection could handle, there would be a need to create a connector.

He said this could be all the way down Old Piscataqua Road, or just as far as the entrance to the treatment plant, where a new intersection could be created that would allow enough distance potentially to create a left turn lane between the restricted bridge just to the east of the parcel and what would be a new intersection further to the west.

Mr. Chinburg said it was pretty apparent now that there couldn't be more than 35,000 sf of use at the Business Park unless there was an investment of infrastructure dollars that hadn't previously been contemplated. He said he had spoken to two potential users, one of which was still a possibility, who would create a use the Town would find very attractive.

He said for their initial use of the site, they could get by based on the intersection there now. But he said they would have expansion goals, and were deterred by having to pay the extra dollars for land in the future as well as having to make the infrastructure improvement. He said what was proposed was a simplification of the existing agreement.

Councilor Clark asked if the agreement would be explicit that the connector would occur in the future.

Mr. Chinburg said he thought that if the user of the site created an expansion that defaulted the Route 4 intersection, the user would have to spend those improvement dollars.

Councilor Clark asked if there would be some kind of certainty that this day would come, and Mr. Chinburg said that would be based on the use. Councilor Clark said it was therefore possible that the usage wouldn't exceed 35,000 sf, and Mr. Chinburg said that had always been the case.

Councilor Needell asked if the current agreement was contingent on plan approval, and Mr. Chinburg said it was set up so the parcel wouldn't have to be purchased unless the plan was approved. But he said the property could also be purchased in advance.

Councilor Needell said an attractive thing about agreeing to this change was selling the property, and said it might be appropriate to remove the contingency that there would have to be an approved plan in order to do this.

Administrator Selig noted that a strong component of the partnership with Chinburg had been finding someone who would be willing to work with the design guidelines for the

### Business Park.

Councilor Carroll said the \$350,000 would go to the water and sewer users, and Administrator Selig explained that it would be used to replenish the sewer capital reserve fund. Councilor Carroll said Charlie White was paid \$500,000 for the property and \$100,000 was spent to bring water and sewer out there, so the Town was not ahead in selling this parcel. She said the numbers didn't add up.

Mr. Chinburg said his understanding was that a benefit of the agreement was that if the property was developed, the Town would have a taxable property.

Councilor Carroll said the taxable base issue was under scrutiny especially because one couldn't get in and out on Route 4. She noted that the Council had just heard about this issue for the last hour. She asked who was going to build the next left turning lane, and asked if it would be the Town of Durham again.

Mr. Chinburg said the agreement should make it clear that if someone built more than 20-30-40,000 sf, they would have to build that infrastructure improvement. He said no pressure would be put on the Town to do this.

Councilor Carroll said this Council had never talked about the specifics of fully developing Piscataqua Road. She suggested that if it was built it should not be asphalted because the Town couldn't pay for it. She also said they didn't know how the neighbors would feel about this, and whether it would fit into an overall plan. She said if it did, that was fine, but said the Council hadn't put that out on the table yet. She said she was surprised at how little content was provided to the Council on this Agenda item, for something that had a lot of potential consequences, and said a lot more information was needed.

Chair Niman said there had been a lot of discussion about the agreement itself. He said what was at issue here was changing the number in it, not the agreement itself. He asked what kind of assessed value a \$350,000 building would have, and it was estimated that the property might have \$3 million in assessed value, which translated to \$81,000 per year in taxes.

Councilor Stanhope said he was concerned that if the agreement was amended, and Mr. Chinburg then sold the parcel, how, the Town would be protected.

Mr. Chinburg said the Town had attached design guidelines to this zone, which would survive any transfer of the land. He said if there was any concern about this, they could survive as part of the agreement. He said his intention was to see this through to a good development, and to see that it met the design guidelines. He also said regardless of the road access issue, amending the agreement would simplify things, and make it easier to use the parcel as it existed today with the current intersection. He said someone wanting to expand beyond that would have to go through the whole design and review process.

Councilor Carroll said when Chinburg had partnered with the Town and the agreement was worked on, she had felt he was a responsible builder who would do well by the Town. But she said she had the same concerns Councilor Stanhope had that if this went through the property could be sold and the Town would be in partnership with someone else.

Mr. Chinburg said with the agreement, there had never been a total guarantee that he would be there. He said the design guidelines and Zoning would apply to everyone, but also said it was not his intention to sell the property to someone else, although the possibility existed.

Chair Niman asked Mr. Chinburg whether if he purchased the property outright and then decided he was not interested in developing it, he would perhaps give the Town the right of first refusal to purchase it back at whatever price that was paid for it.

Mr. Chinburg said that would be fine with him. He said the party that was the most seriously interested in the property wanted him to shepherd the development, although there might be another builder given the type of building being considered. He said he would stay involved in the project and work through the approval process with this particular party.

Councilor Stanhope asked if the interested party would take the property in its entirety, or if Chinburg would be doing some subdividing and pod-type of development.

Mr. Chinburg said the party had a primary purpose that would utilize most of the parcel, so he envisioned they would take the entire property.

Councilor Stanhope said Chinburg would essentially deliver it to them with the approvals, and Mr. Chinburg said this was essentially what the company had been thinking of doing previously when there were a number of buildable areas on the site. But he said this had gone from 5 buildable areas down to one main buildable area and 2 small ones, so the property lent itself to one primary user.

Councilor Carroll said if this amendment to the agreement did go forward, time passed and something wasn't built and Mr. Chinburg decided he didn't want the property, she would like the agreement to state there would be a right of first refusal. She said the Town has always felt it wanted some control over the property.

Administrator Selig said the agreement referenced the design guidelines, which included a committee that would work with the developer.

There was discussion about the fact that Mr. Chinburg would be agreeable to selling the property back to the Town if it was not developed.

Councilor Mower asked if the Council was comfortable with the possibility of not even getting \$80,000 for taxes because of the costs associated with it, and less than this if the

full 35,000 sf wasn't built. She said the Town would also have lost an opportunity to have something more out there. She noted the whole idea of connecting this area to other parts of Town. She said there were other questions, concerning possible jobs, public access, and a possible residential use of the property.

Chair Niman noted that when the property was purchased for \$500,000, it was thought that 10-15% of the approximately 30 acres was unusable. But he said now because of further soils analysis and the wetland buffer, just under 6 acres was buildable.

He said it had not been his goal to eke every dollar out of this property, and said if this was the goal, the Council would get rid of the design guidelines, and would change some buffers, etc. He said he didn't think it had been the Council's goal to simply go after tax dollars with this property. He said he thought they were looking for some commercial development that broadened the tax base, hopefully would bring in some services people wanted, and could serve as an anchor for redeveloping that whole corridor.

Chair Niman said he didn't know where they would find a better partner than Chinburg, who understood the Town and its values. He said he was encouraged that Mr. Chinburg had said the property might be able to be developed commercially, and said he would hate to miss that opportunity.

Councilor Stanhope said given the economy and lending environment right now, it amazed him that Mr. Chinburg had showed up. He said the Town had owned the property too long, and said there could be property taxes from it even if nothing happened on the property, which was a step in the right direction. He also said Mr. Chinburg would not buy this unless he expected to bring it into production at a higher level.

***Councilor Mower MOVED to extend the meeting beyond 10:30 pm. Councilor Smith SECONDED the motion, and it PASSED unanimously 9-0.***

Administrator Selig noted that the Town had increased the value of the property in the agreement at one point, but said now they were seeing that it perhaps made sense to revisit this and bring the price down while staying with the development partner. He also noted that there was a requirement in the agreement that there be public access, and he said this would continue as well.

***Councilor Van Asselt MOVED to approve the amendment to the terms of the Purchase and Sale Agreement between the Town of Durham and Chinburg Builders relative to the Durham Business Park. Councilor Smith SECONDED the motion.***

Councilor Carroll said she would vote against this motion. But she said if it was approved, she thought Mr. Chinburg would be a very good partner. She said after hearing the last discussion on Route 4, and Councilor Clark's questions on how the development off Morgan Way could have happened with no left turning lane on Route 4, voting for a development on Route 4 this evening seemed ironic.

Councilor Clark said he was happy Chinburg was thinking this might actually be a business park, and could be sold with the design standards in place. He provided details on this. Regarding the Route 4 issue, he said the timing of this was interesting, and said he assumed that as the buildable lot got smaller and smaller, the volume of traffic coming out of this would be more manageable than the volume of cars coming out of Morgan Way. But he said he would want to know that.

Administrator Selig said the State would require the developer to make improvements to meet the State standards.

Councilor Needell said the State would have to sign off on the use and access prior to any plan, and this could be part of the sale of the property. He said it was important that there be very thorough review of access and safety there, and said if there were expenses for this, this would be the burden of the developer.

***The motion PASSED 7-1, with Councilor Carroll voting against it.***

Councilor Sievert returned to the table.

## **XI. New Business**

**FIRST READING ON ORDINANCE #2009-12** amending Chapter 175 “Zoning”, Article XII “Zone Requirements”, Section 175-45 (F) (2)(3)(4) of the Durham Town Code relative to the Courthouse District

Administrator Selig provided background information on the reason for this proposed Zoning change.

Councilor Smith said these were the baby steps that came out of the discussion by the Planning Board. He said there was a public hearing at the last meeting, noting that prior to this at that same meeting, there was a public hearing on the proposed parking at Mill Plaza. He said no one remained in the room after that hearing to comment on these proposes changes.

He said amending this would allow the Planning Board to grant a Conditional Use permit for parking within the setback from one side of the lot to the other, and also reduced the landscape strip to at least 5 ft. He noted that he had recommended that there be no landscape strip, which would be consistent with what was in front of the Courthouse, and in front of Village Garage, which was one of the last historical garages. He said a developer wanting to do something with Village Garage might very well go to the ZBA.

***Councilor Mower MOVED to pass on FIRST READING ON ORDINANCE #2009-12 amending Chapter 175 “Zoning”, Article XII “Zone Requirements”, Section 175-45 (F) (2)(3)(4) of the Durham Town Code relative to the Courthouse District. Councilor Smith SECONDED the motion.***

Councilor Needell said the primary reason for this was Cumberland Farms, and asked if

people would be required to have a 5 ft vegetative strip in front of that building.

Mr. Campbell said where the sidewalk was, there would be a five ft strip, and said cars couldn't just drive anywhere in front.

Councilor Needell said he wanted to be sure that the intent was that there be two driveway cuts, one on either side of the property, and that cars would park behind the buffered strip.

Mr. Campbell said that was the intent, and Councilor Needell said in other words, the entire width of the building was not to be a driveway.

Councilor Van Asselt said he saw no reason not to have zero landscaping in front of Cumberland Farms. He said the only property that didn't have one was Village Garage.

Mr. Campbell noted the foreign motors business next door, and also said there might be infill in the future as well, as noted in the recent charrette, where a 5 ft buffer strip would be required. He said he didn't think the Planning Board was willing to let go of having some green area.

Councilor Van Asselt asked if there could be the maximum parking at Cumberland Farms and still have the five ft buffer in front.

Mr. Campbell said even without the landscaped buffer, there would have to be angled parking in front of Cumberland Farms, and he provided details on this. There was discussion that the buffer strip wouldn't affect this, even though it was a tight area.

Councilor Stanhope asked what the functional utility would be of this 5 ft buffer. He asked if any parking spaces would be lost as a result of the buffer at Cumberland Farms and the other properties.

Mr. Campbell said they might be able to put in a parallel parking space where the buffer was. But he said even that would be tight. But he said there should be plenty of room at the other sites in the district.

Councilor Sievert asked why conditional use would be needed for this, and Mr. Campbell said the idea was to make this more palatable to the public by providing some kind of control.

Councilor Smith said there were other properties between Newmarket Road and where the Courthouse District ended. He provided details this, and said what had been proposed was a step in the right direction and encouraged development in the Courthouse district.

Councilor Van Asselt said these were good intentions, but questioned why the conditional use process was needed.

Councilor Smith suggested having the public hearing, and then perhaps amending what they had. There was discussion that at this point, the Council couldn't make anything more than non-substantive changes.

Councilor Needell said he agreed with Councilor Sievert on this. He said he didn't like conditional use, and thought putting it in this instance almost circumvented the intent of moving a project along there. He said it should not be used to allow a little protection, and was meant to possibly allow something one would normally say no to.

Mr. Campbell said if this didn't pass on first hearing, he'd be happy to take it back to the Planning Board to take another look at it.

Councilor Van Asselt asked if this could be sent back to the Planning Board first so they could take another look at it.

***The motion FAILED 1-8, with Councilor Smith voting in favor of it.***

***Councilor Van Asselt MOVED to send the proposal back to the Planning Board to take a second look at Conditional Use, and the 5 ft buffer. Councilor Stanhope SECONDED the motion.***

Councilor Mower noted that the Town had just hired a design team to discuss options for the downtown that included significant discussion on landscaping, as well as reworking Young Drive and stretches along the commercial core. She said there were members of the community who valued landscaping even where there would be gas stations. She said a 5 ft buffer could make a difference in terms of the human scale, walkability, etc., of a development.

Councilor Sievert suggested that there could be a landscape buffer of some kind out front, as compared to a 5 ft strip of landscaping.

Councilor Clark agreed, and said they shouldn't limit themselves to a five ft buffer, and instead should use good judgment. He also noted that the recent charrette had indicated that buildings close to the street created interest.

Councilor Mower said not having parking in front was often the better solution, but when it did work this was because there was something pedestrian-friendly there, and it was often landscaping.

Chair Niman said if the motion passed, the Council could request that Mr. Campbell ask the Planning Board to consider a more generic type of landscape buffering for the front.

Councilor Needell said if the conditional use process was removed from the recommendations, they would be reverting back to what existed before this section was written. He said he thought a buffer strip was a good idea there, whether it was 5 ft or something more nebulous.

Chair Niman said he thought it was the consensus of the Council that they wanted vegetation, but didn't want to restrict it to 5 ft, especially when it didn't work.

Councilor Smith suggested the possibility that the Planning Board could come back with another draft that included language to allow a building at the sidewalk, but if there was parking between the building and the sidewalk, there should be a 5 ft buffer.

Chair Niman said if there was parking in front, a landscape buffer should be required, but said there should be some flexibility on the size of the buffer to avoid having to go for a variance.

***The motion PASSED unanimously 9-0.***

**X.**

- G. Continued deliberation on the Town Administrator's proposed FY 2010 Operating Budgets and Capital Budget, and the 2010-2019 Capital Improvement Plan

Chair Niman said this Agenda item would be postponed.

**XII. Nonpublic Session (if required)**

**XIII. Extended Councilor and Town Administrator Roundtable (if required)**

**XIV. Adjourn (NLT 10:30 PM)**

***Councilor Stanhope MOVED to adjourn the meeting. Councilor Mower SECONDED the motion, and it PASSED unanimously 9-0.***

Adjournment at 11:01 pm

Victoria Parmele, Minutes taker